

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

TAYLOR MOTORS, INC.,

And

Cases 10-CA-141565

10-CA-141578

**AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 2022, AFL-CIO**

10-CA-145467

TAYLOR MOTORS, INC.,

And

Case 10-RC-137728

**AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES (AFGE), AFL-CIO, LOCAL 2022**

**RESPONDENT'S EXCEPTIONS TO
ADMINISTRATIVE LAW JUDGE'S DECISION**

Respondent Taylor Motors, Inc. ("Respondent), by its undersigned counsel and pursuant to Rule 102.46 of the Board's Rules and Regulations, files the following exceptions to the decision of Administrative Law Judge ("ALJ") Keltner W. Locke dated July 14, 2015¹ filed in the above-captioned matter.

A. Complaint ¶¶ 9 and 10 – Suspension and Termination of Anthony Williams

1. Respondent excepts to the ALJ's findings that the exculpatory denial made by Williams concerning the hanging statement attributed to him is more credible and reliable than the testimony of Terri Nolen and Janice Schwenz, because that credibility determination is

¹ Citations to the Administrative Law Judge's decision will be referenced as "ALJD" followed by the appropriate page and line numbers. References to the hearing transcript will be referenced as "Tr." followed by the appropriate volume and page number. The Consolidated Complaint, Order Consolidating Cases and Notice of Hearing will be referenced as "Compl." followed by the appropriate paragraph number.

erroneous and because Williams' exculpatory denial is not supported by the preponderance of the evidence. ALJD p. 33 lines 30-35 and p. 34 line 1-42.

2. Respondent excepts to the ALJ's reliance on the fact that three witnesses did not hear Williams make the hanging comment attributed to him, in making his determination as to whether to credit Williams' exculpatory denial or to credit the testimony of Terri Nolen and Janice Schwenz concerning the hanging statement, because that credibility determination is erroneous and is not supported by a preponderance of the evidence in the record. ALJD p. 34 lines 27-42.

3. Respondent excepts to the ALJ's finding that Beate Poston, Mary Jane Dotson and Barbara Fenwick were within "earshot" of Williams because that conclusion is not supported by a preponderance of the evidence in the record. ALJD p. 33 line 46 and p. 34 lines 1 and 2.

4. Respondent excepts to the ALJ's finding that Terri Nolen and Janice Schwenz "disliked the entire union organizing campaign and resented having to participate in the election" because that conclusion is not supported by a preponderance of the evidence in the record. ALJD p. 34 lines 13-14 and p. 39 lines 40-41.

5. Respondent excepts to the ALJ's finding that Mary Jane Dotson's "annoyance at having to participate in an election may well have colored her perception" because that conclusion is not supported by a preponderance of the evidence in the record. ALJD p. 26 lines 10-11.

6. Respondent excepts to the ALJ's finding that the account of events put forth by Anthony Williams related to his conduct and statements made in the bus bay of Taylor Motors is more reliable and credible than the accounts testified to by Terri Nolen and Mary Jane Dotson, because those credibility determinations are erroneous and because the account advanced by

Williams is not supported by a preponderance of the evidence. ALJD p. 26 note 7 and p. 42 lines 25-30.

7. Respondent excepts to the ALJ's finding that "it should be stressed that the scales appear about evenly balanced and my decision not to credit the testimony of Nolen and Schwenz might well be wrong," because the exculpatory denial put forth by Williams cannot be supported by a preponderance of the evidence in the record. ALJD p. 34 lines 38-39.

8. Respondent excepts to the ALJ's finding that Williams did not make any statements about hanging people or any reference to the Halloween display on Litwin Street, because that conclusion is not supported by a preponderance of the evidence in the record. ALJD p. 34 lines 40-42 and p. 40 lines 26-28.

9. Respondent excepts to the ALJ's finding that Williams' comments to employees about voting for the Union in the Taylor Motors parking lot and the voting line constituted activity protected by the National Labor Relations Act, because that conclusion is not in accord with applicable NLRB law nor is it supported by the preponderance of the evidence in the record. ALJD p. 38 lines 23-24 and p. 39 line 4-7.

10. Respondent excepts to the ALJ's application of a subjective standard, rather than an objective standard, in assessing whether Williams hanging comment constituted a threat or intimidating statement, because that analysis ignores overwhelming NLRB precedent to the contrary. ALJD p. 30 lines 30-42, p. 31 lines 3-6 and 35-41, p. 32 lines 1-18 and p. 41 lines 1-14.

11. Respondent excepts to the ALJ's finding that the statements attributed to Williams did not constitute threats of physical violence and did not create a racially charged atmosphere or intimidation, because that conclusion is not in accord with applicable NLRB

precedent nor is it supported by the preponderance of the evidence in the record. ALJD p. 40 lines 35-36.

12. Respondent excepts to the ALJ's finding that the analytical framework applied by the Supreme Court in *NLRB v. Burnup & Sims*, 379 U.S. 21 (1964) is the proper framework for examining the evidence and assessing whether the suspension and discharge of Williams violated the Act, because that conclusion is not in accord with applicable NLRB precedent nor is it supported by the preponderance of the evidence in the record. ALJD p. 37 lines 31-36 and p. 39 lines 4-24.

13. Respondent excepts to the ALJ's application of the *Burnup & Sims* framework in this case, in that the ALJ improperly placed the burden on Respondent to prove that Williams engaged in the misconduct for which he was disciplined, after Respondent already established it had an honest and good faith belief that Williams engaged in the misconduct. As a result, the ALJ's analysis is not in accord with applicable NLRB precedent. ALJD p. 34 lines 40-41 and p. 40 lines 26-28.

14. Respondent excepts to the ALJ's finding that the General Counsel satisfied its burden under the *Burnup & Sims* framework, because that conclusion is not in accord with applicable NLRB precedent nor is it supported by a preponderance of the evidence in the record. ALJD p. 40 lines 9-11.

15. Respondent excepts to the ALJ's finding that the framework established by the Board in *Wright Line*, 251 NLRB 1083 (1980), *enfd.* 662 F.2d 899 (1st Cir. 1981) *cert. denied* 455 U.S. 989 (1982), is not the proper analytical framework for examining the evidence and assessing whether the suspension and termination of Williams violated the Act, because that

conclusion is not in accord with applicable NLRB precedent nor is it supported by the preponderance of the evidence in the record. ALJD p. 39 lines 7-9.

16. Respondent excepts to the ALJ's finding that Respondent would not have discharged Williams for a racial comment alone, in the absence of supposed threats of physical violence and intimidation, because that conclusion is not supported by the preponderance of the evidence in the record. ALJD p. 42 lines 25-27.

17. Respondent excepts to the ALJ's finding that the framework applied by the Board in *Atlantic Steel Co.*, 245 NLRB 814 (1979) and its progeny is not the proper analytical framework for examining the evidence and assessing whether the suspension and termination of Williams violated the Act, because that conclusion is not in accord with applicable NLRB precedent nor is it supported by the preponderance of the evidence in the record. ALJD p. 39 lines 11-24.

B. Complaint ¶ 7(a) – Alleged Interrogation of Anthony Williams on August 22, 2014

18. Respondent excepts to the ALJ's finding that the account of events pertaining to the allegedly unlawful interrogation of Anthony Williams ("Williams") on August 22, 2014, as put forth by Williams was more reliable and credible than that of Charlotte Moore ("Moore"), because that credibility determination is erroneous and because Williams' account is not supported by a preponderance of the evidence in the record. ALJD p. 6 lines 29-46; p. 7 lines 1-9; and p. 8 lines 25-27 and 40-44.

19. Respondent excepts to the ALJ's finding that Sharon Moore ("Sharon") Charlotte Moore that Williams was passing out "union cards" in the parking lot prior to Charlotte Moore's conversation with Williams and Larry Cruthis ("Cruthis") regarding the "materials" being

distributed in the parking lot, because that conclusion is not supported by a preponderance of the evidence in the record. ALJD p. 4 lines 8-12 and p. 6 lines 13-33.

20. Respondent excepts to the ALJ's reliance on the email Moore sent to Peggy Taylor (GC Ex. 13) as evidence that Moore was aware of the nature of the materials being distributed prior to speaking with Williams and Cruthis, because that conclusion is not supported by a preponderance of the evidence in the record. ALJD p. 6 lines 19-33.

21. Respondent excepts to the ALJ's conclusion that Moore's conversation with Williams constituted an unlawful interrogation, because that finding is not supported by a preponderance of the evidence in the record. ALJD p. 9 lines 24-46.

C. Complaint ¶ 8 – Allegedly Unlawful Confidentiality/Non-Disclosure Agreement

22. Respondent excepts to the ALJ's finding that Respondent continues to maintain the Confidentiality/Non-Disclosure Agreement ("CDNA"), because that conclusion is not supported by a preponderance of the evidence in the record. ALJD p. 19 lines 5-12 and p. 20 lines 9-17.

23. Respondent excepts to the ALJ's finding that the issuance of the August 2014 handbook did not effectively repudiate the CDNA, because that conclusion is not supported by a preponderance of the evidence in the record. ALJD pp. 40-46.

24. Respondent excepts to the ALJ's finding that the issuance of the CDNA would unlawfully chill employees in the exercise of their Section 7 rights, because that conclusion is not supported by a preponderance of the evidence in the record. ALJD p. 22 lines 39-41.

25. Respondent excepts to the ALJ's finding that an employee would reasonably believe that "compensation data" and "personnel/payroll records," as referenced in the CDNA, would include such things as wages, hours, and other terms and conditions of employment,

because that conclusion is not supported by a preponderance of the evidence in the record. ALJD p. 22 lines 30-37.

26. Respondent excepts to the ALJ's finding that the maintenance of the CDNA affected the results of the representation election held on January 15, 2015, and thus justified overturning the election results, because that conclusion is not in accord with applicable NLRB precedent nor is it supported by a preponderance of the evidence in the record. ALJD p. 43 lines 24-32.

27. Respondent excepts to the ALJ's conclusion that having found violations under Section 8(a)(1), it is "a fortiori" that the alleged conduct interfered with the free and untrammelled choice in the January 15, 2015 representation election, because that conclusion is not in accord with applicable NLRB precedent nor is it supported by the preponderance of the evidence. ALJD p. 43 lines 31-33.

28. Respondent excepts to the ALJ's conclusions of law because the preponderance of the evidence, much of which is not considered or addressed in the ALJ's decision, does not support any of these conclusions. ALJD p. 45 lines 21-38.

29. Respondent excepts to the ALJ's proposed remedies because the preponderance of the evidence, much of which is not considered or addressed in the ALJ's decision, does not support any such remedies. ALJD p. 44 lines 9-46 and p. 45 lines 1-17.

30. Respondent excepts to the contents of the ALJ's proposed Order in its entirety because the preponderance of the evidence, much of which is not considered or addressed in the ALJ's decision, does not support the issuance of any such Order or portion thereof. ALJD p. 45 lines 40-44; p. 46 lines 1-44; and p. 47 lines 2-17.

Respectfully submitted this 11th day of August, 2015.

/s/ Christopher M. Caiaccio

Christopher M. Caiaccio, Esq.

Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

One Ninety One Peachtree Tower

191 Peachtree Street, N.E., Suite 4800

Atlanta, Georgia 30303

(404) 881-1300

chris.caiaccio@ogletreedeakins.com

Michael Johnson, Esq.

Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

401 Commerce Street, Suite 1200

Nashville, TN 37219

(615) 687-2220

michael.johnson@ogletreedeakins.com

Attorneys for Respondent

Taylor Motors, Inc.

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10**

TAYLOR MOTORS, INC.,

And

**Cases 10-CA-141565
10-CA-141578
10-CA-145467**

**AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 2022, AFL-CIO**

TAYLOR MOTORS, INC.,

And

Case 10-RC-137728

**AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES (AFGE), AFL-CIO, LOCAL 2022**

CERTIFICATE OF SERVICE

I hereby certify that on this the 11th day of August, 2015, date I have served a copy of the foregoing **Respondent's Exceptions to Administrative Law Judge's Decision** by depositing same in the U.S. Mail, postage prepaid, and addressed as follows, as well as through e-service where applicable:

Claude T. Harrell, Jr.,
Regional Director
National Labor Relations Board
Region 10 – Atlanta Resident Office
Harris Tower
233 Peachtree Street N.E. - Suite 1000
Atlanta, GA 30303-1531
Claude.Harrell@nlrb.gov

Katherine Miller, Esq.
National Labor Relations Board
Region 10 - Nashville Resident Office
810 Broadway, Suite 302
Nashville, TN 37203
Katherine.Miller@nlrb.gov

Hon. Keltner W. Locke
Administrative Law Judge
National Labor Relations Board
401 West Peachtree Street NW – Suite 1708
Atlanta, GA 30303-3510
Keltner.Locke@nlrb.gov

Judy Hansford
Executive Vice President
A.F.G.E., Local 2022, AFL-CIO
2110 Indiana Avenue
P. O. Box 453
Ft. Campbell, KY 42223

Mark Vinson, Esq.
A.F.G.E.
80 F Street NW
Washington, DC 20001
vinson@afge.org

This 11th day of August, 2015.

/s/ Christopher M. Caiaccio
Christopher M. Caiaccio, Esq.

22066363.1